

# SENATE BILL No. 387

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-11.7-5.

**Synopsis:** Counting provisional ballots. Requires that the provisional ballot of an individual whom the county election board determines is an eligible voter of the county, but who cast a provisional ballot in a precinct other than the precinct in which the voter resides, be counted to the extent that the ballots in both precincts are identical.

**Effective:** July 1, 2007.

### Broden

January 11, 2007, read first time and referred to Committee on Local Government and Elections.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## SENATE BILL No. 387

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 3-11.7-5-1.5, AS AMENDED BY P.L.164-2006,  
2 SECTION 123, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2007]: Sec. 1.5. (a) Subsection (c) applies to a  
4 provisional ballot that the county election board determines, by a  
5 majority vote of its members and in accordance with this title:  
6 (1) has been marked and cast by a voter in compliance with this  
7 title; but  
8 (2) may not otherwise be counted solely as the result of the act or  
9 failure to act of an election officer.  
10 (b) Subsection (c) does not apply to either of the following:  
11 (1) A provisional ballot cast by an individual who seeks to vote in  
12 an election as the result of a court or other order extending the  
13 time established for closing the polls under IC 3-11-8-8 if the  
14 county election board determines or is directed under a court or  
15 other order that all provisional ballots issued after regular poll  
16 closing hours are not to be counted.  
17 (2) A provisional ballot that is required to be rejected by a county



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election board under section 2(b) of this chapter as the result of information or lack of information provided by a voter registration agency.

(c) The sealed envelope containing a provisional ballot described in subsection (a) shall nevertheless be opened under section 4 of this chapter and the provisional ballot counted unless evidence of fraud, tampering, or misconduct affecting the integrity of the ballot is demonstrated. The act or failure to act by an election officer is not by itself evidence of fraud, tampering, or misconduct affecting the integrity of the ballot.

(d) Notwithstanding subsection (c) **or (g)**, if the county election board, by a majority vote of its members, determines that there is evidence presented to the board demonstrating that the individual who cast the provisional ballot was ineligible to cast a regular ballot in ~~that precinct~~, **the county**, or evidence has been presented to the board demonstrating any other reason set forth in HAVA or this title not to count a provisional ballot, the provisional ballot may not be counted.

(e) This subsection applies to a provisional ballot cast by a voter after the voter was challenged solely because the voter was unable or declined to provide proof of identification and not for any other reason. If the voter later complies with the requirements of this title for proof of identification, the provisional ballot cast by the voter shall be counted in accordance with sections 2 and 2.5 of this chapter.

(f) This subsection applies to a provisional ballot cast by a voter after the voter was challenged for any reason except the voter's inability or declination to provide proof of identification. If the only evidence before the county election board on the question of counting of the provisional ballot cast by the voter is:

- (1) the affidavit of the voter who cast the provisional ballot; and
- (2) the affidavit of a challenger challenging the voter who cast the provisional ballot;

the provisional ballot shall be counted.

**(g) This subsection applies to a provisional ballot cast by a voter whom the county election board determines on the basis of evidence presented to the board was eligible to cast a regular ballot in the county, but who cast a provisional ballot in a precinct other than the precinct in which the voter resides. The provisional ballot shall be counted as provided in section 2(d) of this chapter.**

SECTION 2. IC 3-11.7-5-2, AS AMENDED BY P.L.103-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) Except as provided in section 5 of this chapter, if the county election board determines that all the following

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1 apply, a provisional ballot is valid and shall be counted under this  
2 chapter:

3 (1) The affidavit executed by the provisional voter under  
4 IC 3-11.7-2-1 is properly executed.

5 (2) The provisional voter is a qualified voter of the ~~precinct~~  
6 **county** and has provided proof of identification, if required, under  
7 IC 3-10-1, IC 3-11-8, or IC 3-11-10-26.

8 (3) Based on all the information available to the county election  
9 board, including:

10 (A) information provided by the provisional voter;

11 (B) information contained in the county's voter registration  
12 records; and

13 (C) information contained in the statewide voter registration  
14 file;

15 the provisional voter registered to vote at a registration agency  
16 under this article on a date within the registration period.

17 (b) If the provisional voter has provided information regarding the  
18 registration agency where the provisional voter registered to vote, the  
19 board shall promptly make an inquiry to the agency regarding the  
20 alleged registration. The agency shall respond to the board not later  
21 than noon of the first Friday after the election, indicating whether the  
22 agency's records contain any information regarding the registration. If  
23 the agency does not respond to the board's inquiry, or if the agency  
24 responds that the agency has no record of the alleged registration, the  
25 board shall reject the provisional ballot. The board shall endorse the  
26 ballot with the word "Rejected" and document on the ballot the inquiry  
27 and response, if any, by the agency.

28 (c) Except as provided in section 5 of this chapter, a provisional  
29 ballot cast by a voter described in IC 3-11.7-2-1(b) is valid and shall be  
30 counted if the county election board determines under this article that  
31 the voter filed the documentation required under IC 3-7-33-4.5 and 42  
32 U.S.C. 15483 with the county voter registration office not later than the  
33 closing of the polls on election day.

34 **(d) This subsection applies to the provisional ballot of a voter**  
35 **whom the county election board determines on the basis of**  
36 **evidence presented to the board was eligible to cast a regular ballot**  
37 **in the county, but who cast a provisional ballot in a precinct other**  
38 **than the precinct in which the voter resides. Except as provided in**  
39 **section 5 of this chapter, if the provisional ballot meets the**  
40 **requirements of subsection (a), the provisional ballot is valid, but**  
41 **only the votes for those offices and public questions that are**  
42 **identical to the offices and public questions on the ballot in the**

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**precinct in which the voter resides shall be counted.**

SECTION 3. IC 3-11.7-5-3, AS AMENDED BY P.L.103-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) If the board determines that the affidavit executed by the provisional voter has not been properly executed, that the provisional voter is not a qualified voter of the ~~precinct~~, **county**, that the voter failed to provide proof of identification when required under IC 3-10-1, IC 3-11-8, or IC 3-11-10-26, or that the provisional voter did not register to vote at a registration agency under this article on a date within the registration period, the board shall make the following findings:

(1) The provisional ballot is invalid.

(2) The provisional ballot may not be counted.

(3) The provisional ballot envelope containing the ballots cast by the provisional voter may not be opened.

(b) If the county election board determines that a provisional ballot is invalid, a notation shall be made on the provisional ballot envelope: "Provisional ballot determined invalid".

SECTION 4. IC 3-11.7-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. **(a) Except as provided in subsection (b),** during the counting of the ballots:

(1) the counter counting the ballots;

(2) a member of the county election board; or

(3) a representative designated by the member;

may protest the counting of any ballot or any part of a ballot.

**(b) A counter, member, or representative described in subsection (a) may not protest the counting of a provisional ballot or any part of a ballot that is valid under section 2(d) of this chapter because the voter voted in a precinct other than the precinct in which the voter resides.**

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